

BARBARA J. NIERNBERGER

THOMAS H. CONNELLY

IBLA 80-401

Decided March 4, 1981

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offer C-27901 and denying approval of assignment of interest in this lease.

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Unit and Cooperative Agreements

A noncompetitive oil and gas lease may only be issued to the first qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

APPEARANCES: Maurice T. Reidy, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Barbara J. Niernberger and Thomas H. Connelly appeal from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated January 16, 1980, rejecting Niernberger's offer to lease C-27901, because she failed to furnish a joinder or attempted joinder within the time required. BLM also rejected Niernberger's assignment of her interest in the lease to Connelly.

Barbara Niernberger's simultaneously filed drawing entry card (DEC) received first priority for parcel CO-196 in a drawing held on March 22, 1979. On March 27, 1979, Niernberger executed an assignment of her interest in the lease to Connelly, which assignment was filed with BLM on April 10, 1979. In assignee Connelly's request for approval of assignment dated April 10, 1979, he signed and thus agreed to be bound by the following statement: "ASSIGNEE AGREES to be bound by the terms and provisions of the lease described here, provided the assignment is approved by the Authorized Officer of the Bureau of Land Management."

BLM issued a decision on April 23, 1979, stating that the land within the offer is within the Fireplace Rock Unit Area. BLM stated that under 43 CFR 3100.6-1 the offeror is required to file evidence with the BLM office that an agreement has been entered into with the

unit operator, Anadarko Production Company (Anadarko), for the development and operation of the lands within the unit area pursuant to the terms and provisions of the approved unit agreement, or file a statement giving satisfactory reasons for failure to enter into such agreement. BLM allowed Niernberger 30 days from receipt of the decision in which to file the required information.

On April 27, 1979, Connelly sent a letter to Anadarko requesting Anadarko "to send me the necessary papers in order that I may put this lease in the Fireplace Rock Unit." This letter was filed with BLM on April 30, 1979. On May 21, 1979, Connelly filed with BLM evidence of attempted joinder to the unit. On this date he also requested a 60-day extension for approval of the joinder. On July 10, 1979, BLM requested further information from Niernberger which she submitted on July 24, 1979. On August 22, 1979, Niernberger filed evidence of attempted joinder. The final joinder instruments, which required the approval of the working interest owners, were accepted by Geological Survey on December 11, 1979.

BLM issued its decision dated January 16, 1980, rejecting the lease offer. There it stated in part:

On May 21, 1979, evidence of attempted joinder to the unit was furnished by Thomas H. Connelly. However, no evidence of joinder or attempted joinder by the offeror was received until August 22, 1979. Thomas H. Connally [sic] has no interest in the land, as an assignment cannot be approved before a lease issues.

The April 23, 1979 decision is considered final and the offer of Barbara J. Niernberger is rejected. The time allowed for appeal of that decision has expired. Regulation 43 CFR 1821.2-2 provides that when a document is required to be filed within a specified period of time, the filing of the document after the expiration of that period cannot be accepted if the right of a third party has intervened. The drawing entry card receiving next priority for parcel CO-196 must now be considered for lease issuance.

Since Barbara J. Niernberger will receive no interest in the land, the assignment to Thomas H. Connelly is of no effect and approval of the assignment is hereby denied. Advance rental will be authorized for refund to Thomas H. Connelly.

In their statement of reasons, appellants contend that the Government recognized that the assignment had been filed because it sent a copy of the April 23, 1980, decision to the assignee; that Connelly met all the requirements listed in the decision of April 30 within the 30-day period; that no action was taken on Connelly's request for an extension of time; that appellants' efforts, under the direction of the unit operator and its agent constituted an "attempted joinder" in accordance with the decision of April 23, 1980; that the unit operator, having been informed that Connelly was assignee, did not request a joinder from Niernberger; that no action was taken by BLM until after all parties required to execute the joinder had been approved by Geological Survey; that the Government should not be allowed to rely upon its own unclear decision of April 23, 1979, to effect a final rejection as of January 16, 1980, without even acting on the request for extension and with all requirements having been satisfied prior to the decision of January 16, 1980.

[1] Departmental regulation 43 CFR 3106.3-4 provides that a transfer of an offer may be approved as incident to the assignment of the lease. The regulation states:

§ 3106.3-4 Transfer of offer.

A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

The case file shows the transferee did sign the application for approval of the transfer, as required by the regulation and he did agree to be bound by the terms and provisions of the lease. Although the form utilized by the offeror and the assignee for submission of their assignment to BLM for approval is entitled "ASSIGNMENT AFFECTING RECORD TITLE TO OIL AND GAS LEASE" and appears to be appropriate for assignments of leases already issued, there is no apparent reason why the same form should not suffice for approval of assignment of a lease offer. The express agreement of the assignee to be bound by the terms of the lease necessarily constitutes an adoption by the assignee of the terms of the assignor's lease offer. BLM offers no explanation why, despite the wording of the regulation which contemplates approval of assignments of offers prior to lease issuance, such approval was not

granted in this case. In any event, BLM recognized Connelly's interest as an assignee and referred to him as such when it sent him a copy of its decision of April 23, 1979. He then complied with the requirements of that decision in a timely fashion. It appears from the record that the offeror believed that the actions of the assignee in providing BLM with evidence of his joinder in the unit agreement constituted compliance with the decision of April 23, 1979 (copies of which had been sent to both the offeror and the assignee), requiring evidence of joinder. The record fails to disclose any effort by BLM to notify the offeror that this was not the case until the decision of January 16, 1980, rejecting the lease offer.

The decision below is in error to the extent it rejected the lease offer on the ground that the offeror's evidence of joinder was filed after the deadline. A noncompetitive oil and gas lease may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976); Cotton Petroleum Corp., 38 IBLA 271 (1978). However, there is no suggestion here that appellant Niernberger's lease offer was defective so as to require disqualification of the offer. Good faith delay in compliance with the regulation and decision regarding evidence of joinder or attempted joinder in the unit may be distinguished from noncompliance with the regulations regarding such matters as proper form of lease offers, evidence of qualifications, and timely payment of rental and filing fees. A violation of the latter has the effect of disqualifying the offer from receiving priority, and the intervening rights of the offeror receiving next priority preclude allowing time

for cure of the defect. Cf. Donald E. Jordan, 35 IBLA 290 (1978) (failure to file rental within 15-day deadline established by regulation); Cotton Petroleum Corp., supra (lease offer not accompanied by evidence of authority of agent to sign).

Accordingly, in light of the good faith effort of appellants Niernberger and Connelly to provide the requested evidence of joinder, which has now been supplied, the request for extension of the deadline made by Connelly, and the apparent acquiescence of BLM in extending the deadline for providing the evidence, it was improper to hold that the intervening rights of a third party preclude acceptance of the evidence and require rejection of the lease offer. The extension of time requested by Connelly, whom BLM knew to be the assignee of offeror's interest and whom BLM treated as the offeror's representative in this matter, was sufficient to preclude rejection of the offeror's evidence on the ground it was not filed within the 30-day deadline.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for action consistent with the decision herein.

Anne Poindexter Lewis  
Administrative Judge

I concur:

Bernard V. Parrette  
Chief Administrative Judge

## ADMINISTRATIVE JUDGE STUEBING CONCURRING:

While in full accord with the majority opinion, I think it important to express my analysis of 43 CFR 3106.3-4, which is a significant element contributing to my view of the case.

As noted in the majority opinion, the regulation stated:

§ 3106.3-4 Transfer of offer.

A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

Note that the regulation states, "A transfer of the whole interest in all \* \* \* of the offer may be approved as an incident to the transfer, by assignment \* \* \* of the whole interest in all \* \* \* of the [potential] lease." (Emphasis added.) Since this contemplates approval of the transfer of the offer, no lease could then exist. So the only rational way to read this sentence of the regulation is to imply the modifier "potential" before the word "lease." The regulation also states, "An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the



offer \* \* \*." (Emphasis added.) The meaning of this is obscure. An offer is not binding. It should read "the lease," referring, as the first sentence of the regulation must, to the lease that will issue in response to the offer.

BLM had the executed assignment, signed by the assignee, and stating in the text of this BLM printed form that he agreed to be bound by the lease. To conform this statement on the BLM assignment form with the regulation, the assignees would have had to cross out the word "lease" and write in the word "offer." That would have made no sense, because an offer is not binding on anyone, pending its acceptance, which in BLM practice is signified only by the execution of the lease on behalf of the United States. Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); Raymond N. Joeckel, 29 IBLA 170 (1977).

The last sentence of the regulation is also ambiguous. What "other instances" are there where the transfer of the offer will not be approved prior to the issuance of the lease, and what are the "instances" where it will be?

I conclude that BLM should accept oil and gas lease offer C-27901 of Niernberger and grant approval of assignment of her interest in the lease to Connelly for the following reasons: There was substantial compliance with the requirement of the decision by the assignee, who acted in good faith; the action of the assignee was subsequently ratified by the offeror; the apparent purpose and spirit of the regulation

was satisfied by the assignee's signed agreement to be bound by the terms of the lease; and, finally, the ambiguity of the regulation must be resolved in the appellants' favor in accordance with the rule in Bill J. Maddox, 34 IBLA 278 (1978); Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971); A. M. Shaffer, 73 I.D. 293 (1966).

Edward W. Stuebing  
Administrative Judge

